UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Office of Business Liaison

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INTRACOMPANY TRANSFEREES (L-1a and L-1b)

PURPOSE

This classification provides companies operating in the US the opportunity to transfer key personnel to the US from their foreign parents, subsidiaries, branches or affiliates.

ANNUAL QUOTA

Congress has not specified a maximum number of L-1 nonimmigrants that may be admitted to the US each year. Accordingly, there is no annual quota.

QUALIFYING EMPLOYEES

Foreign nationals who have worked outside the US for a parent, subsidiary, or affiliate of the US company on a full-time basis for one continuous year[1] out of the last three years may qualify for L-1 classification. The principal purpose of an L-1 nonimmigrant's stay must be to work for the approved US employer. As long as this remains true, the alien may divide work between the US and abroad, engage in studies, etc.

QUALIFYING ORGANIZATIONS

The foreign employer and US must be related as parent and subsidiary, affiliates, branches, or joint venture partners. The foreign employer must continue to do business (regular, systematic and continuous provision of goods or services) abroad while the approved US employer employs the L-1 nonimmigrant[2].
Note: A joint venture abroad may transfer employees to a joint venture partner in the US and a joint venture partner abroad may transfer employees to a US joint venture. A joint venture partner abroad may not transfer an employee to its US joint venture partner under L-1 classification.

DEFINITIONS

Executive directs management of the organization, division, or major function, including establishing goals and policies and exercising discretionary decision-making. An executive is supervised by higher level executives, board of directors, or stockholders.
Manager manages the operational affairs of the organization as a whole, an operating division, or a major function. Management includes responsibility for personnel decisions affecting supervisory and professional personnel unless a function is managed. A functional manager must operate at a senior level.
Specialized knowledge is special knowledge (as opposed to knowledge that is common throughout an industry) of the petitioning organization's products, services, research, equipment, techniques, management, or other important factors relating to its international competitive position, or knowledge which could only have been gained through experience with a related foreign entity. A slightly lower level of knowledge is acceptable if knowledge of the organization's processes and procedures is not available in the US labor market. Specialized knowledge need not be proprietary, unique, or narrowly held throughout the company, but must be advanced or complex, primarily gained through prior experience with the petitioning employer, and not easily transferable or taught to another individual.
Parent company is a firm, corporation, or other legal entity that has subsidiaries.
Subsidiary is a company that is controlled by its parent company, regardless of degree of ownership.
Affiliate is one of two companies owned/controlled by the same parent or group of equal owners.[3]
Branch is an operating division of the same organization in a different location.
Joint venture is a business venture wherein two entities share 50-50% ownership and control.

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[1] Any continuous qualifying employment period abroad will be reduced by any time spent in the US.
[2] If the owner of the L-1 petitioner's foreign parent, subsidiary, etc. is the only employee of that company and seeks to transfer to the US, the foreign business would cease to be a viable legal entity since it would no longer be in operation.
[3] Congress created an exception that qualifies franchised accounting firms offering services under the same internationally recognized name under an agreement with a worldwide coordinating organization.

DEPENDENTS IN L-2 STATUS

Spouses and minor children of L-1 nonimmigrants fall under the L-2 classification. Although they may not accept US employment in L-2 status, they may study in L-2 status or apply for change of status to any classification for which they qualify.

EXTENSION OF STAY

L-1a	Initial admission for 3 years maximum, extendible twice for periods of two years
L-1b	Initial admission for 3 years maximum, extendible once for two years
L-1 blanket	Initial admission for 3 years maximum, extendible indefinitely

CHANGE OF NONIMMIGRANT STATUS

To or from the L classification:
An L-1 nonimmigrant may change status to another classification (including but not limited to H-1 or F-1), but may not commence services or activities under the requested classification until INS has approved the change of status. Changes between the H-1 and L-1 classifications count the US duration of stay under the old classification toward the maximum stay allowed under the new classification.

From L-1b to L-1a:
If promoted to a position of manager or executive, an L-1b employee may change status to L-1a provided that the amended petition is submitted six months or more prior to expiration of the L-1b duration of stay. Once the change to L-1a is approved, the new manager or executive becomes entitled to the maximum stay of seven years. In addition, the individual in L-1a status becomes eligible for the first employment-based immigration preference.

DUAL INTENT

An L-1 nonimmigrant, although required to abide by the terms of the approved classification and intend to leave the US at the end of the approved stay unless permanent residence has been granted, is not required to overcome the presumption of immigrant intent. Because L-1 nonimmigrants are permitted to work in the US in temporary status while pursuing steps leading to permanent residence, they need not prove ties to the home country or unabandoned foreign residence in order to be issued a consular visa and admitted to the US. The existence of operations and an appropriate position abroad to which an alien can be transferred at the end of an authorized stay is the most significant factor considered in a determination of intent.

ADJUSTMENT OF STATUS TO PERMANENT RESIDENT

Since this classification allows dual intent, an L-1 nonimmigrant may become a permanent resident without leaving the US. The immigration preference category for which a given L-1 alien will be eligible depends upon his or her circumstances and qualifications, as follows:

FIRST Priority Workers (40,000 visas/year)
- aliens of ***extraordinary*** ability in the sciences, arts, education, business, and athletics
- outstanding professors or researchers
- managers and executives (L-1a) subject to international transfer to the US

Note: Unless an L-1b alien who changed status to L-1a has had qualifying management experience *abroad* for a related organization, adjustment of status under the Multinational Manager or Executive Preference is not possible.

SECOND Priority Workers (40,000 visas/year)
- aliens of ***exceptional*** ability in the sciences, arts, or business
- advanced degree professionals

THIRD Priority Workers (40,000 visas/year)
- professionals with bachelor's degrees (not qualifying for a higher preference category)
- skilled workers (minimum two years training and experience)

SOLE JURISDICTION

Some companies may be eligible to consolidate filings of forms I-129, I-140 and I-539 at a single INS Service Center, without regard to whether the petitioning facility falls within the normal geographic Service Center boundaries. Factors considered by a Service Center in granting sole jurisdiction are (1) a major operating entity of the company is located within that Service Center's jurisdiction (2) covered applications will be filed directly at that Service Center, and (3) the sole jurisdiction relationship may be terminated at any time, by either party, without cause.

FILING PROCEDURE

Form I-129 with L supplement must be filed by the employer/*petitioner* at the INS Service Center with jurisdiction over the US company's location. The alien employee is the *beneficiary*. Instructions accompanying the Form I-129 specify the documentation that must be submitted to INS to support the petition.

Note: L-1 classification does not involve a test of the US labor market (labor certification). Compensation is not prescribed, but US entity must demonstrate ability to pay and US income must be sufficient to prevent the alien from becoming a public charge.

L-1 ADJUDICATION AND EXTENSION OF STAY ISSUES

Qualifying as a manager or executive (L-1a):

The L-1a classification is intended for employees who manage or direct and not for those who produce a company's work products, even in cases where a single employee performs both functions. A manager must supervise other supervisory, professional, or managerial employees, i.e. direct the management and not be involved in non-managerial aspects of the business. A manager of an operation with non-professional employees may qualify as an *executive* as long as he or she does not have operational duties. To qualify as a *manager*, however, it's not the *number*, but the *nature* of employees that matter, along with the *nature* of other duties. Where an L-1 beneficiary is the only employee of the petitioning US employer, and therefore either solely responsible for or involved in production, he or she does not qualify as an executive or manager.[4]

Attributes expected of a US company

Physical premises and equipment must be sufficient for the type of operation, even for new offices. The fact that negotiations for these are underway is not sufficient. In addition, revenues must be sufficient to carry on described operations, including payment of wages, salaries, and other regular business expenses.

NEW US OFFICES

A subsidiary, affiliate, branch, or joint venture partner that has been in business in the US for less than one year may petition for intracompany transferees, but L-1 employees coming to work for such new offices will be admitted initially for a maximum of one year. A successful petition from a new office will include proof that physical premises have been secured for the new operation, that the new office's nature, size, scope, operations, and organizational structure are significant enough to warrant the services of a manager or executive, and that the size of the US investment, including its ability to pay the beneficiary, is sufficient for the business to commence and continue doing business in the US

Note: New office petitions for intracompany transferees, which establish upon filing that they can already support the services of a full-time manager or executive, may be processed as standard L-1 petitions.

Extension of stay Petitioners from new offices should plan new US operations to be able within one year to support a regular managerial or executive position. During the first year, the initially approved L-1a beneficiary may perform non-managerial duties, but after that period, the petitioning business entity must establish that the business has grown to the point where other employees have been hired to perform non-managerial duties. To be granted extension of stay after one year, the petitioning "new office" must:

- Establish that the US and foreign entity retain qualifying relationships
- Submit evidence that the US entity has been doing business (regular and continuous provision of goods and services, whether or not as described in initial petition) during the initially approved period
- Submit a statement of beneficiary's duties to date as well as expected duties
- Submit evidence of the current staffing and financial status of US operation (new office)

[4] Approved new offices get relief from this standard for one year. However, the exception disappears upon extension of stay for the L-1a as a manager or executive.

OFFSITE SERVICES OF L-1 EMPLOYEES

In general, L-1 employees may not engage in contract labor. Business relationships based on contractual, licensing, and franchise agreements are non-qualifying relationships for L-1 classification purposes. However, offsite service is not *necessarily* impermissible in L-1b status unless (1) alien does not possess, and is not using pursuant to a contract involving the approved employer, specialized knowledge particular to approved employer's organization or (2) supervision of employee is under direction of a third party.

BLANKET L-1 PETITIONS (for unnamed beneficiaries)

Petitioning companies with the following characteristics may file blanket petitions for unnamed intracompany transferees, seeking determinations as to whether the petitioner and specified parent, branches, affiliates, and subsidiaries are qualifying organizations:

- Petitioner and each named affiliate are engaged in commercial trade or services
- Petitioner has a US office that has been doing business for at least one year
- Petitioner has at least three domestic and foreign branches, subsidiaries, or affiliates
- Petitioner and related qualifying organizations have obtained approval for at least ten L-1 beneficiaries in the preceding year ***or*** have US subsidiaries or affiliates with combined annual sales of at least $25 million ***or*** have a US workforce of at least 1000 employees

Procedure:

An approved blanket L petitioner transmits a completed Form I-129S, together with a copy of the Form I-797 blanket L approval notice, to the alien(s) it seeks to transfer from abroad to an approved qualifying organization in the US. The alien uses these documents to apply for an L-1 consular visa within 6 months of the form date. Visa exempt aliens may apply for admission, with the I-129S, at any US port of entry.

Note: An L-1b blanket beneficiary must be a *member of a profession* (bachelor's degree or equivalent).

CONSULAR PROCESSING

The L-1 nonimmigrant may take the original (or copy, if acceptable to the issuing consular officer) of the I-797 approval notices to a US consulate abroad and applies for an L-1 visa. Usually, the consulate to which a visa application is made is in the intending nonimmigrant's home country. However, since the nature of work for multinational corporations frequently involves foreign postings, it is sometimes possible to obtain the L-1 visa in a third country.

Note: A foreign national who seeks a visa under an approved L-1 blanket petition may apply for the L-1 visa without an I-797 naming him or her as beneficiary (see blanket petitions above).

MERGERS, ACQUISITIONS, DIVESTITURES

- Following a sale, merger, acquisition, etc., INS may have to review an amended L petition to examine whether a qualifying relationship persists under a successor in interest. If the connection between the foreign entity where the L-1 alien gained qualifying experience and the approved L-1 employer has been severed, a qualifying relationship may not persist. Where both the L-1 alien's foreign and approved US employer have been acquired, the L-1 petition need not be amended if the new employer is a successor in interest and there is no material change in the L-1 employment (e.g. change of name and/or ownership). Where the US employer is acquired but the foreign employer is not, whether L-1 classification is permissible under a successor in interest will depend upon whether it has foreign subsidiaries, affiliates, etc. to which the L-1 can be transferred upon expiration of L-1 status. Such situations require amendment of L-1 petitions.
- INS' 10-22-92 Hogan memo states that an amended petition must be filed if an L-1 employee changes from L-1a to 1b, or is transferred from one company to another within the same organization and becomes an employee of the new organization. This includes mergers or acquisitions where the acquiring/merged company[5] is the new employer. Change of employer name does not require an amended petition, but change in ownership, because it may affect the qualifying relationship with the foreign affiliate, also requires an amended petition.
- Divestiture of the subsidiary, branch, or affiliate abroad at which the approved L-1 employee gained qualifying experience does not disqualify that employee as an intracompany transferee as long as the approved L-1 employer retains one or more other related entities outside the US. The other foreign entity/ies need not be in the L-1 employee's home country.

[5] For employment eligibility verification purposes, 8 CFR 274A.2(B)(1)(viii)(A)(7) defines a related, successor, or reorganized employer to include the same employer at another location or an employer who continues to employ some or all of a previous employer's workforce in cases of corporate reorganization, merger, or sale of stock or assets.

INSPECTION AND FORM I-94

A consular visa will allow the approved L-1 beneficiary to board a common carrier, travel to the US, and apply for admission under L-1 classification at a US port of entry. At that point, an INS inspector will determine the individual's admissibility to the US and stamp the I-94 Arrival-Departure Record with his or her L-1 classification and period of authorized stay.

SPECIAL NAFTA RULES

The same rules apply as for intracompany transferees from other countries *except as follows:*

L-1 Beneficiaries:

- A Canadian citizen beneficiary of an approved I-129 petition for an intracompany transferee (L-1a or L-1b) is not required to obtain a nonimmigrant L visa from a US consulate. Proof of Canadian citizenship is acceptable.
- An I-129 petition involving a Canadian citizen L-1 beneficiary may be submitted, together with filing fee and an application for admission, at a Class A port of entry[6] located on the US-Canada land border or at a US pre-clearance/pre-flight station in Canada.
- A Mexican citizen must apply for an L visa at a US consulate abroad. This visa, together with a valid Mexican passport, must be presented for admission to the US under the L-1 classification.

L-2 Dependents:

- L-2 dependents of Canadian L-1 aliens are not required to obtain consular visas.
- L-2 dependents of Mexican (and all other) L-1 aliens must obtain consular visas in order to be admitted to the US

EMPLOYMENT ELIGIBILITY VERIFICATION (Form I-9)

Although the L-1 individual must obtain a Social Security card bearing a number that will be used by the employer to submit wage reports for the employee, the Social Security card will in most cases bear the annotation "valid only with INS authorization." Accordingly, the individual must present to the employer documentation listed on the Employment Eligibility Verification Form I-9 as List A #4, the unexpired foreign passport and Form I-94 stamped with the L-1 classification under which the nonimmigrant was admitted to the US and the approved L-1 admission period. Since the L-1 classification is employer-specific, the L-1 nonimmigrant is not permitted to work for any employer in the US other than the one for which INS approved the L-1 petition of which he or she was beneficiary.

[6] Class A means that the port is a designated Port-of-Entry for all aliens. See 8 CFR 100.4(c)(2).

Form I-129 Petition for a Nonimmigrant Worker (L Classification)

GENERAL INFORMATION

- This form is filed along with the L Supplement page to temporarily transfer an alien to the US to work for an employer that is a parent, branch, subsidiary, or affiliate of a foreign entity that employed the alien abroad.
- OR, alien beneficiary is currently in the US in L status and seeks extension of L status.
- OR, alien beneficiary is in the US in another valid nonimmigrant status and seeks to change to L status.
- To qualify, alien must have been continuously employed by the foreign entity for at least one year in the three years before his or her application for admission into the United States.

INCLUDES:

- L1A-An employee who will fill a position as a manager or executive;
- L1B-An employee who has specialized knowledge of the petitioning organization and its business, or a member of a profession who has such specialized knowledge.

WHO CAN FILE:

Any qualifying employer seeking to transfer a qualifying alien to the US to work.

WHAT TO SEND:

- Two copies of the petition and supporting documents.
- Proof that the petitioner and the foreign entity that employed the alien abroad have a qualifying relationship. To do this, you must send documentation that establishes that the petitioner and the foreign entity are related in one of the following ways: affiliate, branch, subsidiary, or parent . Proof of ownership and control of the companies will establish such a relationship.
- Proof that the alien will be employed in an executive, managerial, or specialized knowledge position
- detailed description of the duties of the job.
- Proof that the alien has at least one continuous year of full-time employment with a related organization in a foreign country within the three years before the filing of the petition.
- Proof that the alien's prior year of employment with the foreign company was in a position that was managerial, executive, or involved specialized knowledge and that prior education, training, and employment qualifies the alien to do the job in the US.
- If the alien is an owner or major stockholder of the company, the petitioner must send evidence that alien's services are to be used temporarily and that the alien will return to a job in another country.
- Proof that the US entity is or will be doing business as an employer in the US and in at least one other country directly or through a parent, branch, affiliate, or subsidiary during alien's entire stay in US.

If the alien will be coming to the U.S. to open a new office, or if the petitioning US employer has been in business for less than one year before filing this petition, the following must also be enclosed:

- Proof that property to house the business has been leased or purchased; and
- In the case of a manager or executive, proof that within one year of approval, the US business will support a managerial or executive position; in the case of a specialized knowledge employee, that the petitioner has the financial ability to pay the employee.